



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**MAY - 4 2011**

Christopher P. Finney, Esq.  
Finney, Stagnaro, Saba & Patterson Co., L.P.A.  
2623 Erie Avenue  
Cincinnati, Ohio 45208

RE: MUR 6270  
Coalition Opposed to Additional Spending  
and Taxes Candidates PAC and Mark  
Miller, in his official capacity as treasurer

Dear Mr. Finney:

On April 15, 2010, the Federal Election Commission notified your clients, Coalition Opposed to Additional Spending and Taxes Candidates PAC ("COAST Candidates PAC") and Mark Miller, in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time. On April 26, 2011, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe COAST Candidates PAC and Mark Miller, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(a) or 441d or 11 C.F.R. § 110.11. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact April J. Sands, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Mark Allen  
Assistant General Counsel

Enclosure

Factual and Legal Analysis for COAST Candidates PAC  
and Mark Miller, in his official capacity as treasurer

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **MUR 6270**

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5 **RESPONDENTS:** Coalition Opposed to Additional Spending and Taxes  
6 Candidates PAC and Mark Miller, in his official  
7 capacity as treasurer  
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9 **I. GENERATION OF MATTER**

10 This matter was generated by a complaint filed with the Federal Election Commission by  
11 Johnathan C. Gay. See 2 U.S.C. § 437g(a)(1).

12 **II. FACTUAL AND LEGAL ANALYSIS**

13 The complaint alleges that the Rand Paul Committee coordinated an email solicitation  
14 with Coalition Opposed to Additional Spending and Taxes Candidates PAC and Mark Miller, in  
15 his official capacity as treasurer ("COAST PAC"), resulting in the making and receipt of  
16 undisclosed in-kind contributions. The email, dated December 16, 2009, and headed "Action  
17 Alert, 'Money Bomb Today!'" solicits contributions and encourages supporters to visit a website  
18 to view the Rand Paul Committee's receipt of contributions in real time.<sup>1</sup> See Complaint at 3 and  
19 Exhibit J. Both COAST PAC and the Rand Paul Committee deny any coordination.  
20 See COAST PAC response at 3; Rand Paul Committee response at 4.

21 Under the Federal Election Campaign Act of 1971, as amended ("Act"), no person may  
22 make a contribution, including an in-kind contribution, to a candidate and his authorized political  
23 committee with respect to any election for Federal office which, in the aggregate, exceeds

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<sup>1</sup> The "Money Bomb Today!" email contains a disclaimer, "Paid for by COAST Candidates PAC, Mark Miller[,] Treasurer." COAST PAC was formerly registered with the Commission, but its termination request was approved on April 29, 2008.

1 \$2,400, and no candidate or authorized political committee may accept such a contribution.  
2 2 U.S.C. §§ 441a(a)(1) and (f); *see* 2 U.S.C. § 431(8)(A)(i), 11 C.F.R. § 100.52(d)(1). The Act  
3 defines in-kind contributions as, *inter alia*, expenditures by any person “in cooperation,  
4 consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized  
5 political committees, or their agents.” 2 U.S.C. § 441a(a)(7)(B)(i). Treasurers of political  
6 committees are required to disclose all contributions, including in-kind contributions. 2 U.S.C.  
7 § 434(b).

8 Commission regulations set forth a three-prong test to define when a communication is  
9 coordinated. A communication is coordinated with a candidate or candidate committee when:  
10 (1) the communication is paid for by a person other than that candidate, authorized committee or  
11 agent thereof; (2) the communication satisfies at least one of the four “content” standards  
12 described in 11 C.F.R. § 109.21(c); and (3) the communication satisfies at least one of the six  
13 “conduct” standards described in 11 C.F.R. § 109.21(d).<sup>2</sup> 11 C.F.R. § 109.21(a). The content  
14 prong of the coordinated communications test includes: (1) an “electioneering communication”  
15 defined at 11 C.F.R. § 100.29; (2) a “public communication” as defined at 11 C.F.R. § 100.26  
16 that disseminates campaign materials prepared by a candidate; (3) a “public communication” that  
17 expressly advocates the election or defeat of a clearly identified federal candidate; and  
18 (4) a “public communication” that refers to a clearly identified candidate, is distributed 90 days  
19 or fewer before an election and is directed to a targeted audience. 11 C.F.R. § 109.21(c).

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<sup>2</sup> The activity in this matter occurred before the December 1, 2010 effective date of the Commission’s recent revisions to the coordination regulations. *See* Final Rules and Explanation and Justification, Coordinated Communications, 75 Fed. Reg. 55947 (September 15, 2010).

1           An “electioneering communication” is defined as a broadcast, cable or satellite  
2       communication that refers to a clearly identified federal candidate and is distributed to the  
3       relevant electorate 30 days before the primary election or 60 days before the general election.  
4       2 U.S.C. § 434(f)(3); 11 C.F.R. § 100.29. “Public communication” is defined as a  
5       communication by means of any broadcast, cable, or satellite communication, newspaper,  
6       magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or  
7       any other form of general public political advertising, but excludes communications over the  
8       Internet, except for communications placed for a fee on another person’s Web site. 11 C.F.R.  
9       § 100.26.

10           The COAST PAC email solicitation, an Internet communication that, as far as the  
11       Commission is aware, was not posted on another’s website, does not meet the content prong of  
12       the coordinated communications test because it was neither an “electioneering communication”  
13       nor a “public communication.” *See* 2 U.S.C. § 434(f)(3); 11 C.F.R. §§ 109.26 and  
14       109.21(c)(1)-(4). Therefore, the Commission finds no reason to believe that Coalition Opposed  
15       to Additional Spending and Taxes Candidates PAC and Mark Miller, in his official capacity as  
16       treasurer, made an excessive in-kind contribution in violation of 2 U.S.C. § 441a(a) with respect  
17       to the “Money Bomb Today!” email. Further, because the email was neither an “electioneering  
18       communication” nor a “public communication,” the complaint’s related allegation that it  
19       required, but omitted, a disclaimer, has no merit.<sup>3</sup> *See* 2 U.S.C. § 441d, 11 C.F.R. § 110.11.

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<sup>3</sup> The following types of communications require a “disclaimer” statement identifying the person paying for the communication: 1) Any public communication made by a political committee; 2) Electronic mail of more than 500 substantially similar communications when sent by a political committee; 3) A political committee web site available to the general public; or 4) Any public communication made by any person

- 1 Accordingly, the Commission finds no reason to believe that Coalition Opposed to Additional
- 2 Spending and Taxes Candidates PAC and Mark Miller, in his official capacity as treasurer,
- 3 violated 2 U.S.C. § 441d or 11 C.F.R. § 110.11.

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that contains express advocacy, solicits a contribution or qualifies as an "electioneering communication" under 11 C.F.R. § 100.29.